

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 9, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Consent to Third Amendment to Sublease General Lease No. S-3601, William T. White, III Trust, Lessee, to BCI Coca Cola Bottling Co. of Los Angeles, Inc., Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-49:07.

APPLICANT:

William T. White, III Trust, as Sublessor, to BCI Coca Cola Bottling Co. of Los Angeles, Inc., a Delaware Corporation, mailing address is Tax Department, 2500 Windy Ridge Parkway, Suite 700, Atlanta, Georgia 30339 as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands of Kanoelehua Industrial Lots, Lot 33, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-2-49:07, consisting of approximately 33,750 square feet, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

General industrial purposes.

SUBLEASE CHARACTER OF USE:

General Industrial purposes.

TERM OF LEASE:

55 years, commencing on 01/16/1961 and expiring on 01/15/2016. Last rental reopening occurred on 01/16/2001; next rental reopening is scheduled for 01/16/2011.

TERM OF SUBLEASE:

3 years, commencing on 08/18/2009 and expiring on 08/17/2011.

ANNUAL RENTAL:

\$17,010.00.

ANNUAL SUBLEASE RENTAL:

\$71,976.00

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

There is no provision in this lease that requires the Board to revise the rent of the premises based upon sandwich profits.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>N/A</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>N/A</u>	NO <u>__</u>
Good standing confirmed:	YES <u>N/A</u>	NO <u>__</u>

Sublessor is a sole proprietorship and therefore not required to register with the Department of Commerce and Consumer Affairs.

SUBLESSEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

**REMARKS:**

Act 4, First Special Session 1960, authorized the Department to enter into direct negotiation of leases or lease with option to purchase of public lands to victims of natural disaster. General Lease No. S-3601, issued to Edward Inman was a lease with option to purchase.

On April 28, 1967, the Board consented to the assignment of lease from Edward Hamilton Inman, Assignor, to Allan Dale Starr, Assignee. The amount of consideration was \$90,000.00. At its meeting on February 10, 1984, the Board consented to an assignment of lease from Allan Dale Starr, Assignor, to William T. White III, Assignee, under Agenda Item No. F-1-i. The amount of consideration for this transaction was \$680,000.00. At its meeting on October 22, 1993, the board consented to the assignment of lease from William T. White III, Assignor, to William T. White III, Trust, Assignee under Agenda Item No. F-1-a.

At its meeting on 02/26/1999, the Board consented to the sub-lease agreement between William T. White, III, Trust, as Sublessor and BCI Coca Cola Bottling Co. of Los Angeles, Inc. under Agenda Item No. D-13.

**A.** A First Amendment to Sublease Agreement was signed by William T. White, Trustee, Sublessor and BCI Coca Cola Bottling Co. of Los Angeles, Inc., Sublessee on 08/10/2001. The intent of this first amendment to sublease was to;

1. Extend the initial term of the sublease by one year commencing 08/18/2001 and ending 08/17/2002;
2. Increase the annual rent to \$71,623.37, payable in equal monthly installments of \$5,968.61;
3. Sublessee agrees to pay 50% of the State of Hawaii ground lease arbitration fees up to and not to exceed \$2,700.00.

**B.** The Second Amendment to Sublease Agreement was signed by William T. White, Trustee, Sublessor and BCI Coca Cola Bottling Co. of Los Angeles, Inc., Sublessee on 04/26/2002. The intent of this second amendment to sublease was to;

1. Paragraph 2 of the Sublease entitled "Term And Renewal Options" was amended to extend the initial Term of the Sublease for seven years commencing August 18, 2002 and ending August 17, 2009.
2. Paragraph 3 of the Sublease entitled "Rent" was amended to increase the annual base rent which shall be payable in equal monthly installments effective August 18, 2002 as follows.

8/18/02 – 2/17/05	\$67,665.44 Annually	@ \$5,638.79 Monthly
2/18/05 – 8/17/07	\$69,357.08 Annually	@ \$5,779.76 Monthly
8/18/07 – 8/17/09	\$70,744.22 Annually	@ \$5,895.35 Monthly

3. Ground rent was amended to increase the annual ground rent as follows:

8/18/02 – 8/17/09	\$1,232.00 Annually	@ \$102.66 Monthly
-------------------	---------------------	--------------------

4. Paragraph 20 of the Sublease entitled “Commissions” was amended and a total commission fee of two (2%) percent was paid by Sublessor to Robert W. Farrar & Associates, Ltd. and other agents of Sublessee, such amount was amortized over the term of the sublease and fully reimbursed by Sublessee to Sublessor.

C. The Third Amendment to Sublease Agreement was signed by William T. White, Trustee, Sublessor and BCI Coca Cola Bottling Co. of Los Angeles, Inc., Sublessee on 8/16/09. The intent of this third amendment to sublease is to;

1. Extend the term of the sublease by two years commencing 09/18/2009 and ending 08/17/2011;
2. No change in the annual rent to \$70,744.22, payable in equal monthly installments of \$5,895.35;
3. No change in the annual ground rent of \$1,232.00, payable in equal monthly installments of \$102.66.

The Lessee is current with all the terms and conditions of the lease including rent and insurance. The previous rental reopening was on 01/16/2001 and the annual rent was set at \$18,300.00. This amount was contested by the lessee and through arbitration, the annual rent was revised and set at \$17,010.00. The next rental reopening is scheduled for 01/16/2011. There are no other outstanding rental reopening issues.



Staff is recommending the Board consent to the third amendment to sublease between William T. White, III Trust, as Sublessor, and BCI Coca Cola Bottling Co. of Los Angeles, Inc., as Sublessee.

RECOMMENDATION:

That the Board consent to the third amendment to sublease under General Lease No. S-3601 between William T. White, III Trust, as Sublessor, and BCI Coca Cola Bottling Co. of Los Angeles, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Gordon C. Heit  
Land Agent 

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson 

# EXHIBIT A

